IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.449 OF 2006

Shantilal Bhikchand Surana Petitioner

versus

Kantilal Bhikchand Surana & ors. Respondents

Mr.A.S.Rao for petitioner.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th February 2006

PC :

1. In my view, a writ petition under Article 227 of the Constitution of India cannot be entertained to interfere with the discretion exercised by the Court below in not deciding an issue pertaining to limitation at the preliminary stage or at the instance of a defendant who has filed written statement. The application itself is misconceived because that proceeds to invoke the Court's jurisdiction under Order 7 Rule 11 clause (d) of the CPC which the learned Judge has rightly disallowed the petitioner- defendant to invoke, in the facts of this case. Needless to

state that the order passed would not prevent the petitioner from requesting the Court below to frame the issue of limitation and try it with other issues. Petition dismissed.

(S.C.DHARMADHIKARI, J.)